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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re A.W., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

M.B.,

Defendant and Appellant.

D074772

(Super. Ct. No. J519772)

APPEAL from orders of the Superior Court of San Diego County, Michael
Popkins, Judge. Reversed and remanded with directions.

Paul A. Swiller, under appointment by the Court of Appeal, for Defendant and
Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County
Counsel, and Emily Harlan, Deputy County Counsel, for Plaintiff and Respondent.

M.B. appeals from jurisdictional and dispositional orders under Welfare and Institutions Code sections 300 and 360.¹ She contends the trial court did not properly comply with notice requirements pursuant to the Indian Child Welfare Act (ICWA), title 25 United States Code section 1901 et seq., and California Welfare and Institutions Code section 224 et seq. She contends the San Diego County Health and Human Services Agency (Agency) did not follow required procedures for ICWA notice. She asks this court to reverse the jurisdictional and dispositional orders and remand for compliance with ICWA.

The Agency submits a letter to this court conceding error and stating a limited remand is appropriate to ensure compliance with ICWA notice provisions.

The parties have filed a joint stipulation for immediate reversal of judgment, limited remand of action to the juvenile court for ICWA notice, and issuance of immediate remittitur in the appeal.

We agree the matter must be remanded to the juvenile court to ensure ICWA compliance. We reverse the jurisdictional and dispositional orders, subject to reinstatement if, after proper notice, the juvenile court determines the child is not an Indian child within the meaning of ICWA.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

FACTUAL AND PROCEDURAL BACKGROUND

In June 2018, the Agency detained three-year-old A.W. in protective custody when her parents were arrested and held on serious felony charges. M.B. denied any Indian heritage. A.W.'s father, S.W., stated he was, or may be, a member of, or eligible for membership in, one of the Cherokee tribes. The juvenile court ordered that notice of the proceedings be sent to all identified tribes and the Bureau of Indian Affairs (BIA) as required by law.

S.W. claimed Cherokee ancestry through his maternal relatives. S.W.'s mother (paternal grandmother) told the social worker the family did not have Indian heritage. She later said the family did not have Indian heritage but her memory was not very good and her answers may not be right. The paternal grandfather denied any Indian heritage. The social worker collected family information from the grandparents. On July 12, 2018, the Agency sent notice of A.W.'s dependency proceedings to the BIA and the three Cherokee tribes by certified mail.

In an addendum filed on August 13, 2018, the social worker attached certified mail receipts for the parents, the BIA, and the three Cherokee tribes; a letter from the BIA acknowledging receipt of the ICWA inquiry; and a response letter from one of the noticed tribes, the Eastern Band of Cherokee Indians, stating A.W. was neither registered nor eligible for membership in the tribe. However, a *Notice of Child Custody Proceeding for Indian Child* form (ICWA-030), which contains required information about the child's parents, grandparents, and great-grandparents, was not filed with the juvenile court prior to the contested jurisdiction and disposition hearing on August 22, 2018.

At that hearing, the juvenile court found that ICWA notice had been properly given and set a hearing on September 24 to further address ICWA issues. M.B. filed a timely notice of appeal from the jurisdictional and dispositional hearing.

DISCUSSION

ICWA notice requirements are strictly construed. (*In re G.S.R.* (2008) 159 Cal.App.4th 1202, 1216.) California Rules of Court, rule 5.481(b) requires the social worker or the court to send the ICWA-030 to the parent, guardian, Indian custodian and the child's tribe; and file the proof of notice, including the ICWA-030, return receipts, and any responses from the BIA and tribes with the court. "The notice must include the name, [birth date], and birthplace of the Indian child; his or her tribal affiliation; a copy of the dependency petition; the petitioner's name; a statement of the right to the tribe to intervene in the proceeding; and information about the Indian child's biological mother, biological father, maternal and paternal grandparents and great-grandparents or Indian custodians, including maiden, married and former names or aliases; [birth dates]; places of birth and death; current and former addresses; tribal enrollment numbers, and/or other identifying information.'" (*In re Louis S.* (2004) 117 Cal.App.4th 622, 630; see § 224.2 [requiring notice to be sent by registered or certified mail with return receipt requested].) Notice is meaningless if no information or insufficient information is presented to the tribe to make that determination. (*In re D.T.* (2003) 113 Cal.App.4th 1449, 1455.)

The Agency acknowledges the ICWA-30 form, with the requisite information as detailed above, was not filed with the juvenile court prior to the jurisdictional and dispositional hearing. As M.B. points out, the juvenile court must receive and consider

the contents of the ICWA notice or its subsequent ICWA findings are subject to reversal on appeal. (*In re Karla C.* (2003) 113 Cal.App.4th 166, 178-180.) The Agency concedes the juvenile court must review this information before determining whether the ICWA notice was proper. M.B.'s identification of ICWA error and the Agency's concession are supported by the record. We agree the matter must be remanded for compliance with ICWA notice requirements.

DISPOSITION

The jurisdictional and dispositional orders are conditionally reversed. The case is remanded to the juvenile court with directions to vacate its findings that proper notice was given and ICWA does not apply, and complete notice in accordance with ICWA. If, after proper notice, the court finds that A.W. is an Indian child, the court shall proceed in conformity with ICWA. If, after proper notice, the court finds that A.W. is not an Indian child, the jurisdictional and dispositional orders shall be reinstated. Remittitur shall issue immediately.

HALLER, J.

WE CONCUR:

NARES, Acting P. J.

DATO, J.